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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Dominique Antaune White,

No. CV-24-00013-PHX-DLR

Plaintiff,

ORDER

V.

Department of Veterans Affairs, et al.,

Defendants.

Before the court are the Government's motion to dismiss (Doc. 25) and several motions submitted by Plaintiff Dominique Antaune White (Docs. 21, 22, 23, & 33). For the reasons set forth herein, the Court grants the Government's motion, rendering White's motions moot.

I. Background

White, who is self-represented, alleges that he visited the Veteran Medical Center in Phoenix, Arizona in 2017. (Doc. 1 at 4.) He claims that, during his visit, he was forcefully administered drugs and sexually assaulted. (*Id.*) He filed this claim on January 3, 2024. (*Id.* at 1.) He has since filed several motions: a “motion to have medical information disclose[d] to cooperate with investigation” (Doc. 21); a “motion for concern of safety and security for pittybike@gmail.com” (Doc. 22); a “motion in remembrance of Maggie Hurtzell” (Doc. 23); and a “motion to comply with federal investigation” (Doc. 33).

1 White did not submit an administrative claim to the Department of Veterans Affairs
 2 (“VA”) prior to filing suit. (Doc. 25-1.) The Government now moves to dismiss for lack of
 3 subject matter jurisdiction due to White’s failure to exhaust his administrative remedies.
 4 (Doc. 25 at 1.)

5 **I. Legal Standard**

6 Under Federal Rule of Civil Procedure 12(b)(1), a party may move to dismiss a case
 7 for lack of subject matter jurisdiction. *Tosco Corp. v. Cmtys. for a Better Env’t*, 236 F.3d
 8 495, 499 (9th Cir. 2001), *overruled on other grounds by Hertz Corp. v. Friend*, 559 U.S.
 9 77 (2010); *see also Carijano v. Occidental Petroleum Corp.*, 643 F.3d 1216, 1227 (9th Cir.
 10 2011). “Motions to dismiss under this Rule ‘may attack either the allegations of the
 11 complaint as insufficient to confer upon the court subject matter jurisdiction, or the
 12 existence of subject matter jurisdiction in fact.’” *Sabra v. Maricopa Cnty. Comty. Coll.*
 13 *Dist.*, 479 F. Supp. 3d 808, 813 (D. Ariz. 2020) (quoting *Renteria v. United States*, 452 F.
 14 Supp. 2d 910, 919 (D. Ariz. 2006)).

15 In resolving a facial attack, the court must accept the allegations in the complaint as
 16 true and construe them in a light most favorable to the plaintiff. *Renteria*, 452 F. Supp. 2d
 17 at 919. Dismissal is improper unless it appears beyond doubt that the plaintiff can prove
 18 no set of facts supporting his claim that would entitle him to relief. *Love v. United States*,
 19 915 F.2d 1242, 1245 (9th Cir. 1989). In resolving a factual attack, on the other hand, the
 20 court does not attach presumptive truthfulness to the allegations in the pleading, and the
 21 court may review any evidence outside the pleadings, including affidavits and testimony,
 22 to resolve factual disputes concerning the existence of jurisdiction. *McCarthy v. United*
 23 *States*, 850 F.2d 558, 560 (9th Cir. 1988).

24 **II. Analysis**

25 The Government attacks subject matter jurisdiction both facially and factually. To
 26 establish subject matter jurisdiction in a case against the United States, there must be (1)
 27 “statutory authority vesting a district court with subject matter jurisdiction,” and (2) “a
 28 waiver of sovereign immunity.” *Alvarado v. Table Mountain Rancheria*, 509 F.3d 1008,

1 1016 (9th Cir. 2007). Even where statutory authority vests the Court with subject matter
 2 jurisdiction, the Government must consent to suit. *Dunn & Black, P.S. v. United States*,
 3 492 F.3d 1084, 1087–88 (9th Cir. 2007). A waiver of sovereign immunity must be express
 4 and unequivocal, and the Court must construe these waivers in favor of the Government.
 5 *Id.* at 1088.

6 The Federal Tort Claims Act (“FTCA”) provides a limited statutory waiver of the
 7 United States’ sovereign immunity for cases like White’s. The FTCA provides that the
 8 United States can be sued for tort claims arising from negligent or wrongful acts of federal
 9 employees acting within the scope of their employment. 28 U.S.C. § 2679(b)(1). But for
 10 any such claim to survive, a claimant must strictly comply with the FTCA’s prerequisites
 11 to filing suit. *See Jerves v. United States*, 966 F.2d 517, 521 (9th Cir. 1992). The FTCA
 12 requires claimants to file an administrative claim with the appropriate administrative
 13 agency before bringing suit. 28 U.S.C. § 2675; *Brady v. United States*, 211 F.3d 499, 502
 14 (9th Cir. 2000); *Cadwalder v. United States*, 45 F.3d 297, 300 (9th Cir. 1995). “The
 15 requirement of an administrative claim is jurisdictional” and therefore must be “strictly
 16 adhered to.” *Brady*, 211 F.3d at 502.

17 Here, even construing the Complaint liberally,¹ it contains no allegation that White
 18 submitted an administrative claim prior to filing suit. Thus, facially, the claim is lacking
 19 subject matter jurisdiction. But the Government has also submitted evidence that White
 20 cannot amend his complaint to allege compliance because he, in fact, never filed an
 21 administrative claim. The Government submitted a declaration from Cynthia Hernandez,
 22 Deputy Chief Counsel of the VA, who attested that any administrative claim White
 23 submitted would have been recorded in the VA’s computerized database. (Doc. 25-1.) That
 24 database contains no record of any administrative claim submitted by White. (Doc. 25-1.)
 25 White does not contest this point in his response, nor does he submit any evidence to
 26 contradict the Government’s evidence. (*See* Doc. 30.) In fact, his response appears to *admit*

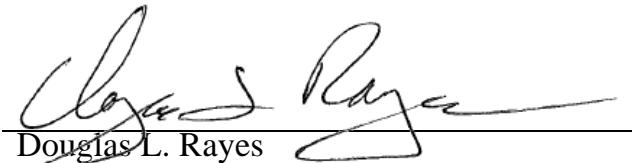
27 ¹ “A document filed *pro se* is to be liberally construed and a *pro se* complaint,
 28 however inartfully pleaded, must be held to less stringent standards than formal pleadings
 drafted by lawyers.” *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (quotations and citations
 omitted).

1 he did not submit an administrative claim. (See *id.* at 5.)

2 The Government has demonstrated a lack of subject matter jurisdiction requiring
3 dismissal. White failed to exhaust his administrative remedies as required by the FTCA.
4 The Court thus lacks subject matter jurisdiction and must dismiss the case. Dismissal
5 renders White's motions moot.

6 **IT IS ORDERED** that the Government's motion to dismiss (Doc. 25) is
7 **GRANTED**. The case is dismissed without prejudice for lack of subject matter
8 jurisdiction. The Clerk of the Court is directed to terminate all remaining motions as moot
9 and close this case.

10 Dated this 4th day of December, 2024.

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16 Douglas L. Rayes
17 Senior United States District Judge
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